

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAN 5 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SIMON D. SMITH,

Defendant-Appellant.

No. 15-30030

D.C. No. 3:10-cr-00124-TMB
District of Alaska,
Anchorage

ORDER

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Appellee's motion to dismiss Simon D. Smith's appeal in light of the valid appeal waiver (Docket Entry No. 34) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (appeal waiver is enforceable if its language encompasses the right to appeal on the grounds raised and the waiver is knowingly and voluntarily made). The record does not support Smith's contention that he was not apprised of the nature of his former counsel's conflict of interest. Rather, the record shows that the district court held a hearing on the issue and gave Smith an opportunity to withdraw from the plea agreement, and that Smith choose to proceed with sentencing.

DISMISSED.